

REMARKS

By the Office Action of 6 February 2003, Paper No. 10, Claims 10-14 and 29-44 are pending in the Application, Claims 32-44 are treated as withdrawn, and Claims 10-14 and 29-31 are rejected. Applicants kindly request reconsideration of the rejections and consideration of new Claims 45-46.

**1. Election/Restrictions**

Applicants respectfully request reconsideration of the treatment of Claims 36-39 as being withdrawn from consideration for being directed to a non-elected invention.

The reason stated in the Office Action for treating Claims 32-44 as being withdrawn from consideration for being directed to a non-elected invention is "the combination does not require to have the step of fixedly maintaining the tabs in the permanent sealing station of the folding and sealing apparatus, the tabs being permanently sealed in the region of tab overlap by full-surface sealing". Page 2. The Applicants respectfully note that Claim 36 includes this limitation. Therefore, the stated reason for treating Claim 36 as being withdrawn from consideration is incorrect. Claims 37-39 depend upon Claim 36 and, therefore, include this limitation as well. As a result, Applicants respectfully submit that Claims 36-39 should not have been treated as withdrawn from consideration as the basis for withdrawal does not apply to these claims.

Claim 36 as originally submitted is a dependent claim. Applicants herein have amended Claim 36 to place it in independent form. Applicants have also cancelled Claims 31-35 and 40-44 to meet the election/restriction requirement.

**2. Specification>Title**

Applicants amend the title as kindly suggested by the Examiner in view of the cancellation of the apparatus Claims 41-44.

**3. The Claim Rejections Under 35 U.S.C. §102-103**

Claims 10, 14, 15[sic] and 29-31 stand rejected under 35 U.S.C. §102(b) as being anticipated by Mattei, et al. (4,887,408). Applicants respectfully request reconsideration of this rejection.

First, Claim 15 was previously cancelled and is not shown on page 1 of the Office Action (Boxes 4 and 6) as pending. Accordingly, Applicants present no further comments as to Claim 15.

The heart of this rejection is found at page 5 under the heading "Response to Arguments". There, the Office Action comments that "Applicants argue in page 9 of the arguments argue that none of the cited references disclose a double sealing process, first temporarily maintaining the folded tabs, and second distant of the first step fixedly maintaining (permanently sealing) the tabs". The Office Action further comments that the "Examiner believes that Mattei discloses two different sealing stations, the first one 45 for pre-folding and the second sealing station 57 for finishing the work".

Applicants respectfully request reconsideration of Claims 10, and now Claim 36, and their dependent claims as being anticipated by the Mattei reference. In particular, Applicants respectfully submit that the Examiner's belief is incorrect. While Mattei does disclose two different sealing stations, stations 45 and 57, they are for sealing different tabs and thus, there is no teaching or suggestion in Mattei that the first sealing station 45 is for pre-folding and the second sealing station 57 is for-finishing the pre-folded work, namely the same tabs, of station 45. First, Applicants note that no issue is raised in the Office Action that Claim 10 cites a process for providing a pack with an outer wrapper wherein the tabs of the outer wrapper are folded and temporarily sealed at a first sealing station and fixedly (permanently) sealed at a second station distant of the first station.

In contrast to the invention recited in Claim 10, the first heat seal station 45 of Mattei maintains overlapping side flaps 61 and 63, fusing them together. See Col. 4, lines 43-48. The pack of Mattei is then moved on to a second sealing station 57 where the relative heat-seal elements 57 operate fusing the flaps of the top 9 and the bottom 10 of the wrapper 3. See Col. 4, line 67-Col. 5, line 2. Accordingly, the first sealing station 45 of Mattei serves to fixedly seal one set of flaps, namely side flaps, and the second sealing station 57 of Mattei serves to fixedly seal a different set of flaps, namely end flaps. Thus, there is no teaching whatsoever in Mattei that sealing station 57 operates to fixedly seal the same flaps which are operated on by sealing station 45.

Accordingly, Mattei does not serve to disclose each and every feature of Claim 10, and its dependent Claims 11-14 and 29-31. The rejection under 102, therefore, cannot stand.

Similarly, Claim 36 recites the use of a first sealing station for temporarily maintaining certain tabs and a second, subsequent, sealing station for fixedly maintaining the same tabs which

are temporarily sealed by the first station. Accordingly, Claim 36 and its dependent Claims 37-39 are not anticipated by Mattei, et al. for the same reasons as Claim 10.

With respect to the claim rejections under 35 U.S.C. §103, the secondary reference McDaniel likewise does not teach the use of a first sealing station for temporarily maintaining tabs followed by a second separate sealing station for fixedly maintaining the same tabs. As a result, McDaniel does not cure the disclosure lacking in Mattei, et al. with regard to the claims.

#### **4. New Claim 45**

Applicants respectfully submit that new Claims 45-46 are allowable for the same reasons as Claims 10 and 36. New Claim 45 is directed to a process which similarly involves the use of a temporary sealing station followed by a separate permanent sealing station for sealing the flaps previously temporarily sealed.

#### **5. Fees**

No additional claims fees are believed due for the additional Claims 45-46 in view of the cancellation of Claims 32-35 and 40-44 herein, and in particular, independent Claim 41.

A one month extension of time petition is hereby requested. Applicants authorize the extension of time fee to be charged to Deposit Account no. 20-0778.

In addition, the Office is authorize to charge any fee deficiency in connection with this amendment to Deposit Account no. 20-0778.

**CONCLUSION**

In view of the comments and remarks herein, Applicants respectfully submit that the pending claims are in condition for allowance. Accordingly, Applicants respectfully request early and favorable action. Should the Examiner have any further questions or reservations, the Examiner is invited to telephone the undersigned Attorney at 770.933.9500 (x213).

Respectfully submitted,  
*Todd Deveau*  
Todd Deveau  
Registration No. 29,526

THOMAS, KAYDEN  
HORSTEMEYER & RISLEY, LLP  
100 Galleria Parkway, Suite 1750  
Atlanta, Georgia 30339  
Phone: 770-933-9500  
Fax: 770-951-0933